Subject: FW: Consumer Bankruptcy CLE Cases II

Synopsis and presentation: [Presented to DE Bankruptcy Inn of Court 1/12/2021]

-- In Re Brown, 18-11843 BLS (October 2019)—Dispute as to the terms under the Note or Loan Mod which control the claim and the arrears. Debtor proved that the Note terms prevailed even though it was a negative amortization, and the Bank could not meet its burden of calculating as posed in the Motion for Relief and POC filed.

– In re Foxx , 19-11710 LSS (7/1/2020) Reaffirmation review in depth by Judge Silverstein reiterating her 2015 Keith Smith Opinion and applicable to special class creditor Credit Unions as well as other creditors.

–In re Goldfeder, 17-12873 LSS (10/26/2020) "Homestead" Exemption as in the "principle Residence" established for this Debtor on the Petition filing date. Court review of burdens on production and persuasion, and estopple arguments as recognized in State Court years ago, can not be persuasive as to the Exemption in Bankruptcy.

In re Brown:
Chapter 13 case—Mortgage Company Motion for Relief and Debtor's Objection to Mortgage POC pursuant to a loan modification and the result of the cure under the plan. The Bank's Motion for Relief claimed the Debtor owed approximately $76k with arrears of almost $39k to cure and the Debtor objected to the POC and to the arrears amount as well as the payment each month going forward during the chapter 13 plan term. February 2000, Brown executed a note and Mtg. ag. Her Home at $21k with 12.24% Int. but payment was set at $217.97 w/ Interest paid first and maturity date of loan of March 2030, required all balances to be paid. Loan Mod terms reduce the Interest for a period of 2 years on the Unpaid Principal balance of over $43k in 2012 and the maturity date and Note provisions remain in effect after the reduced Interest rate period of two years had expired. Debtor's positon that the Note is controlling as to the Interest application and payment is sustained even though a negative amortized Note, and the POC must be revised and amended to reflect the original terms. The loan modification was a temporary change, and did not dictate any further terms than that of the original note. The ultimate burden of persuasion was on the Bank to prove the amounts listed in the claim, which they failed to do.

In Re Foxx:

In this chapter 7 case, Debtor entered into a reaffirmation agreement with her credit union to reaffirm the debt secured by her home. Debtor's attorney refused to sign a declaration pursuant to § 524(c)(3), as he believed that the agreement imposed an undue hardship on the Debtor. The court rejected the credit union's reaffirmation agreement because if a debtor is represented by counsel in the course of negotiating a reaffirmation agreement, it is not enforceable if the attorney certification is not signed. The credit union moved for reconsideration. On reconsideration, the credit union argued that the words "if applicable" in § 524(c)(3) were referring to the credit union exception in § 524(m)(2), and therefore no attorney declaration was needed. The court rejected this argument and held that those words refers to whether the Debtor is represented by counsel.

In Re Goldfeder:

The issue in this case was whether on the petition day, the real property the Debtor seeks to exempt was her principle residence. The Debtor filed a voluntary chapter 7 bankruptcy petition. The Debtor listed a single-family home claimed as exempt on the schedule of assets. Deutsche Bank filed an objection to the claimed exemption and contended that the house is not the Debtor's principal residence. Under Delaware law, only state exemptions are available as Delaware has opted out federal exemptions. The individual debtor shall be authorized to exempt from the bankruptcy estate equity in real property which constitutes a debtor's principal residence. The term "principal residence" is not defined in the statute. When a debtor list the property she claims as exempt on her schedules, all property on the list is exempt, unless a party in interest objects. Under Bankruptcy Rule 4003(c), the objecting party has the burden of proof to show that the exemption is not properly claimed.

Deutsche Bank first argued that the Debtor was estopped from arguing that the house was her principal residence because in a foreclosure action in Delaware Superior Court, the Debtor claimed that she did not receive the notice of the foreclosure action because she was not living at the address at the time. The Court disagreed, as the foreclosure was six years before the Debtor filed for bankruptcy, and the issue here was whether the house was the Debtor's principal residence on the petition date. Deutsche Bank also submitted other documents to support its position, but the Court did not find the evidence to be persuasive. In contrast, the Court found that the evidence submitted by the Debtor, such as her Delaware ID cards and utility bills, were sufficient evidence to prove that the Debtor was living at the property on the petition date. Therefore, the Court concluded that Deutsche Bank failed to meet its burden of proof to show that the claimed homestead exemption was not properly claimed.

From: Michael B. Joseph
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To: 'Brignola Erin K.'
Subject: RE: Consumer Bankruptcy CLE

a. In re: Kauker No. 18-11171 (Bankr. D Del. 2019, Shannon)

i. Husband and wife Chapter 13 debtors established a family trust in 2007 for estate planning purposes. At that time, they transferred their ownership interest in their home to the trust. When filing the Chapter 13 case in 2018, the debtors claimed their residence as exempt under tenants by the entireties. Based upon a review of the trust documents and the parties' intent, the court held that the debtors did not intend to terminate the tenancy by the entireties, although the real property was held in the family trust.

b. In Re Taro No. 19-10892 (BLS) (Bankr. D Del 2020. Shannon)

i. Creditor filed an objection to the Debtor's claim of exemptions asserting that Bankruptcy Code Section 522(b)(3)(A) prevents the Debtor from claiming Delaware exemptions. The Debtor owned and had resided in a home in Delaware, however prior to the filing of the bankruptcy petition he had been living in Maryland to care for his father and help in a business. The Debtor possessed a Delaware Driver's license and maintained that Delaware was his intended domicile. In accordance with Section 522(b) of the Bankruptcy Code, an individual debtor domiciled in Delaware may exempt property as provided under 10 Del C Sec. 4914, and that allows for exemptions in a debtor's principal residence of up to $125,000 in equity. In this case the Court extensively reviewed and analyzed "domicile" -[A] person may have more than one residence, but only one domicile ...[a] change in residence without a change in an intent to return to the original state does not indicate a change in domicile."

ii. The Court found that the debtor always intended Delaware to be and remain as his domicile, and denied the creditor's objections.

c. In Re United Tax Group LLC No. 14-10486 (Bankr. DE Del 2020 Silverstein)

i. In this case certain parties in interest filed a Motion Seeking the Removal of the Chapter 7 Trustee. The chapter 7 case had a long and tortured history, and the Court cited numerous instances of acrimony among the parties, and the Court being asked to impose sanctions on one or the other. Removal of a trustee under Section 324 of the Bankruptcy Code must be for cause. The court reviewed the legal standard for cause, and found that courts decide these motions on a case by case basis. The courts look at "trustee incompetence, violation of the trustee's fiduciary duties, misconduct or failure to perform the trustee's duties, or lack of disinterestedness or holding an interest adverse to the estate."

ii. The court held that removal was not warranted in this case, although the Court recognized this Trustee takes aggressive positions and can be gruff and overbearing.

d. In Re: Mary Armbrust No. 18-11134 9Bankr D Del 2020 Shannon)

Court sustained objection to confirmation of Chapter 13 Plan where amended plan provided for surrender of vehicle but the debtor failed to surrender at that time, and plan did not provide for payments until dater of surrender.

In Re; Armbrust is actually just an Order, but an important concept: Armbrust was Interim Confirmed and paying on the secured vehicle. Payments were distributed and then the debtor decided to surrender, did not turn over the vehicle for 6 months, and failed to clearly place the secured creditor on notice of the surrender.